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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,886	03/15/2002	Steven L. Ringler	RIN03 P-306	5404

7590

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EXAMINER

ROANE, AARON F

ART UNIT	PAPER NUMBER
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3739

7

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/099,886	Applicant(s) RINGLER ET AL.	
	Examiner Aaron Roane	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 7, 10-13, 15, 16, 23, 25 and 26 is/are rejected.
- 7) ☒ Claim(s) 2-6, 8, 9, 14, 17-22 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Liao (USPN 6,423,942 B1).

Regarding claim 1, Liao discloses an instrument comprising a shroud (the entire elongate portion located distally to element 110 containing elements 12, 20, 30, etc.) having a hair

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inlet aperture (23), a heating element cavity (interior of 20), a sheath (81) positioned within the heating element cavity, wherein the heating element (80) is positioned within the sheath and thermally coupled to the sheath and a handle supporting the shroud, see col. 2-5 and figures 1-4.

Regarding claim 15, Liao further discloses a shroud having teeth (teeth on element 40, the roller member), see col. 2, lines 49-67 and figures 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Liao (USPN 6,423,942 B1) in view of Adams (USPN 4,721,121).

Regarding claims 7, 10, 16, 25 and 26, Liao discloses an heating instrument for hair comprising a shroud (the entire elongate portion located distally to element 110 containing elements 12, 20, 30, etc.) having a hair inlet aperture (23), a heating element

cavity (interior of 20), a sheath (81) positioned within the heating element cavity, wherein the heating element (80) is positioned within the sheath and thermally coupled to the sheath and a handle supporting the shroud, see col. 2-5 and figures 1-4. Liao fails to disclose a vacuum source to draw fumes from the proximity of the heating element.

Adams discloses a hair treatment device having a heating element (131) and teaches using a fan (124) in a suction mode in order to pull moisture from the hair, see col. 3, line 56 through col. 6, line 34 and figures 5 and 6. The fan used in a suction mode disclosed by Adams is interpreted by the examiner as a vacuum source, it creates air or fluid (in the broad sense of the word) flow in a proximal direction by creating a pressure gradient.

Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Liao, as taught by Adams, to use a fan in a suction mode in order to pull moisture from the hair.

Regarding claims 10 and 26, Liao in view of Adams discloses the claimed invention.

Adams further discloses a filter (119) located proximally to the vacuum source, see col. 5, lines 3-27 and figures 5 and 6.

Claims 11, 12, 13 and 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Liao (USPN 6,423,942 B1) in view of Adams (USPN 4,721,121) as applied to claims 1 and 16 above, and further in view of Barzilai et al. (USPN 5,354,967).

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Regarding claims 11, 12 and 23, Liao in view of Adams disclose the claimed invention except for providing the device with a temperature sensing means and a temperature control unit. Barzilai et al. disclose a hair heat treatment device and teach the use of providing a temperature sensor (40) and a temperature control unit (71) in order to regulate and control the temperature of the device and make sure it is operating at the correct temperature, see abstract, col. 3-11 and figures 1-8. It should be noted that the temperature control unit, if it is to regulate the temperature of the device is inherently in communication with the heating element. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Liao in view of Adams, as taught by Barzilai et al., to provide a temperature sensor and a temperature control unit in order to regulate and control the temperature of the device and make sure it is operating at the correct temperature.

Regarding claim 13, Liao in view of Adams in further view of Barzilai et al. do not specifically disclose the use a thermocouple. However, the examiner takes official notice and states that it is well known in the art to use several different devices, for example, a thermocouple, a thermistor, and a leakage diode to sense temperature. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention, as is well known in the art, to use anyone of several different sensing devices as an equivalent means of sensing temperature.

Allowable Subject Matter

Claims 2-6, 8, 9,14,17-22 and 24 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Beginning on page 7, line 17 of Applicant's amendment (Paper #6) Applicant argues that the prior art does not disclose the heating element disposed on a sheath within the heating cavity. The examiner agrees that the previously made rejections do not disclose this feature. However, the examiner has conducted an additional search and has presented art that meets the claimed feature.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (703) 305-7377. The examiner can normally be reached on 9am - 5pm, Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*
March 2, 2004

Roy D. Gibson
ROY D. GIBSON
PRIMARY EXAMINER